



To: Component Executives and Presidents

From: Roger Herr, PT, MPA, President

Date: July 9, 2024

RE: Summary of Action Lifetime Use of DPT for Promotion of its Personal Training Program – DPT – Dynamic Personal Training.

APTA has engaged in efforts to ensure the title “DPT” is protected as a designator for a licensed physical therapist under state law and the credential associated with graduating from a “doctor of physical therapy” program accredited by the Commission for Accreditation in Physical Therapy Education (CAPTE), an organization recognized for this purpose by the US Department of Education. APTA has engaged external legal counsel in this effort.

Summary of Actions (through July 1, 2024)

- **December 15, 2022** – APTA sent correspondence to the CEO of Life Time, Inc. outlining APTA’s concerns with their use of the initials DPT, and highlighting the potential violation of state law. APTA offered to meet to discuss APTA’s concerns with Life Time.
- **May 16, 2023** – FSBPT, through their legal counsel filed a 90-day request for extension of time to oppose Life Time, Inc.’s trademark application for DPT DYNAMIC PERSONAL TRAINING and design with the U.S. Patent and Trademark Office.
- **May 17, 2023** – APTA, through its legal counsel filed an initial 30-day request for extension of time to oppose Life Time, Inc.’s trademark application for DPT DYNAMIC PERSONAL TRAINING and design.
- **June 14, 2023** – APTA through its legal counsel requested a further 60-day extension of time to oppose Life Time, Inc.’s trademark application for DPT DYNAMIC PERSONAL TRAINING and design.
- **July 25, 2023** – Life Time, Inc. responded to a letter by FSBPT counsel indicating that they do not believe the DPT Dynamic Personal Training trademark

application is misleading or compromises the DPT – Doctor of Physical Therapy credential established in state law.

- **October 10, 2023** – Life Time, Inc. responded that they do not believe the DPT – Dynamic Personal Training program trademark is confusing or misleading to the public, declined to make modification to the trademark or use of DPT – Dynamic Personal Training (Letter from Frager Drinker – counsel to Life Time, Inc.).
- **October 16, 2023** – APTA and FSBPT separately filed trademark oppositions with the U.S. Patent and Trademark Office. The opposition proceedings were instituted and are pending.
- **November 27, 2023** – Life Time, Inc. filed a motion to dismiss APTA’s Opposition; and separately filed a motion to dismiss the Federation’s Opposition.
- **December 18, 2023** – APTA opposed the Motion to Dismiss
- **January 4, 2024** – The Federation opposed the Motion to Dismiss
- **January 8, 2024** – Life Time, Inc. filed a reply in support of their motion in both the Opposition filed by APTA and the Opposition filed by the Federation
- **February 12, 2024** – the TTAB denied Life Time, Inc.’s motion to dismiss the Federation’s Opposition which was based on deceptiveness pursuant to Section 2(a) of the Trademark Act
- **February 27, 2024** – the TTAB granted in part and denied in part Life Time, Inc.’s motion to dismiss and resetting the dates in APTA’s Opposition. The TTAB struck APTA’s claim for deceptive misdescriptiveness under Trademark Act Section 2e(1) because that issue was overcome by Life Time, Inc. having filed a disclaimer of the term DPT in their trademark application; but, the TTAB denied the motion to dismiss based on deceptiveness pursuant to Section 2(a) of the Trademark Act. The Opposition is thus going forward based on a claim of deceptiveness under to Section 2(a).
- **March 4, 2024** – Life Time, Inc. answered the Federation’s Notice of Opposition
- **March 27, 2024** – Life Time, Inc. answered the APTA’s Notice of Opposition
- **On or before April 2, 2024** – the Federation’s legal counsel and Life Time, Inc.’s legal counsel held a required telephonic discovery conference to discuss the Opposition and potential for settlement. The Federation informed counsel for APTA that no settlement developments came out of the meeting.
- **April 25, 2024** – APTA’s legal counsel and Life Time, Inc.’s legal counsel held a required telephonic discovery conference to discuss the Opposition and potential for settlement. Counsel for Life Time, Inc. said that Life Time intends to continue to litigate this matter. APTA’s counsel discussed that APTA had provided terms in their October 2, 2023 letter to Life Time. Life Time’s counsel had no update on

Life Time agreeing to settle. Life Time's counsel also indicated that they do not wish to use the TTAB's optional Accelerated Case Resolution procedures, which could have resulted in a decision much sooner.

- **May 28, 2024** – APTA and Life Time exchanged "Initial Disclosures" required by the Opposition, which are high level lists of witness and documents that may have or contain discoverable information that each may use to support its claims or defenses.
- **June 12, 2024** – Life Time, Inc. filed a motion to consolidate APTA's Opposition with the Opposition filed by the Federation (both APTA and the Federation informed Life Time, Inc. they would not oppose a motion to consolidate -- because the USPTO would almost certainly grant the motion based on relatedness of the issues, evidence and parties).
- **June 21, 2024** – the USPTO TTAB granted the motion to consolidate

Trademark and Trial Advisory Board (US Patent and Trade Office) Decisions to Date

As noted above, the TTAB permitted both the Federation's and APTA's Oppositions to proceed based on a claim of deceptiveness under Section 2(a) of the Trademark Act. The TTAB found that both the Federation's and APTA's Oppositions had sufficiently pled that they had entitlement to a statutory cause of action (standing) and had sufficiently pled the elements of a deceptiveness claim under Section 2(a), which are: (1) the registered term is misdescriptive of the character, quality, function, composition or use of the goods; (2) prospective purchasers are likely to believe that the misdescription actually describes the goods; and (3) the misdescription is likely to affect the decision to purchase.

Projected Next Steps and Timeline

With respect to their actions at the TTAB, the Federation and APTA must prove the above noted elements of a deceptiveness claim under Section 2(a). The current schedule of dates in the consolidated case are as follows:

- Expert Disclosures Due 9/23/2024
- Discovery Closes 10/23/2024
- Plaintiff's Pretrial Disclosures Due 12/7/2024
- Plaintiff's 30-day Trial Period Ends 1/21/2025
- Defendant's Pretrial Disclosures Due 2/5/2025
- Defendant's 30-day Trial Period Ends 3/22/2025
- Plaintiff's Rebuttal Disclosures Due 4/6/2025

- Plaintiff's 15-day Rebuttal Period Ends 5/6/2025
- Plaintiff's Opening Brief Due 7/5/2025
- Defendant's Brief Due 8/4/2025
- Plaintiff's Reply Brief Due 8/19/2025
- Request for Oral Hearing (optional) Due 8/29/2025

The discovery phase is now ongoing in the Consolidated Opposition. APTA may serve written proven discovery requests to address the issues in the case. Under the current schedule, the last day that APTA can serve discovery requests is September 23, 2024. Generally, responses to discovery requests are due in about 30 days. However, parties in cases before the TTAB often seek extensions of due dates and it is customary to grant short extensions regarding discovery matters. Further, the TTAB will readily grant consented extensions of dates (to a point). The APTA may wish to consider a pilot expert survey to determine whether a full survey could be useful to support their case. Expert surveys are not required and are expensive, but may be helpful.

If APTA has sufficient and undisputed evidence to prove their case before their pretrial disclosures are due, APTA can consider filing a motion for summary judgment; or follow regular trial procedures and submit evidence and trial briefs and await a decision after trial.

Summary

APTA is committed to this process as well as processes outside TTAB/USPTO, including other federal and state regulatory bodies and agencies.